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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/535,067 03/23/00 BUBAR

R 4645/31

000757
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IM31/0731

EXAMINER

TRAN	INVENT
ART UNIT	PAPER NUMBER

1761
DATE MAILED:

07/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/535,067

Applicant(s)
Bubar

Examiner
Lien Tran

Art Unit
1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 10, 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7 20) ☐ Other:

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1. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulucci (4842882) for the same reason set forth in paragraph 7 of the previous office action.

With respect to newly added claims 13-20, Paulucci does teach docketing the dough with dockers to prevent delamination of crusts, forming into pizza shapes and baking in an oven. Paulucci does not disclose the amounts of flour, margarine and water as claimed; however, such amounts can vary depending upon the size and quantity of dough made. Therefore, it would have been within the skill of one in the art to determine such factors. As to the process steps by which the claimed product is made, the determination of product-by-process claims is based on the product itself, even though such claims are limited and defined by process. (See *In re Thorpe* 227 USPQ 964)

2. In the response filed May 10, 2001, applicant makes reference to the reason for allowance in the parent application and states that such patentable features are now recited in the product claim 12. The reason for allowance in the parent application is a different issue from the instant application because the claims in the parent application were directed at a process of making the laminated dough. The determination of patentability for method claims is different from the product claims. Applicant states claim 12 is amended to recite a plurality of margarine layers distributed between layers of dough. Such feature is taught by Paulucci because he discloses dough sheets are laminated with shortening flakes distributed between each of six layer; this will give layers of fat distributed between layers of dough. The difference resides in the use of shortening versus margarine. However, it is well known in the art to substitute butter, margarine

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for shortening or vice versa. Applicant argues the dough disclosed by Paulucci is not a dough having laminated fat and dough layers as confirmed by the attached Declaration of Ronald O Bubar. The declaration is not found to be persuasive and will be addressed later on in this office action. Applicant further argues Paulucci would not suggest the use of other specified steps in the process nor the particular point at which the margarine is introduced onto the dough. The difference in the processing steps does not determine the patentability of the product. The examiner recognized that the Paulucci process is different from the process as disclosed; however, applicant has not shown that the difference in the process results in a different product. Applicant also states the claimed product gives unexpected results as shown by the attached declaration.

The declaration is not found to be persuasive for the following reasons. The declaration states that the result of numerous tests of the products shows that the dough crusts of Paulucci are bready products that have a porous, open, rounded internal cellular structure. First of all, it is not clear what applicant mean by "bready". Paulucci discloses in example 6 that the pizza crust has a flaky, airy interior. The term flaky is normally used to describe pastry products which have fat layers. Thus, this description tends to indicate that the Paulucci product has layers of fat between layers of dough. Also, applicant does not present any evidence to support the conclusion found. On page 3, the declaration states the use of shortening flakes results in a product not having a uniform, multi-layered structure of fat separating multiple layers of dough. However, the declaration does not give any evidence to support the conclusion. There is no showing of how this conclusion is reached. Applicant states that numerous noncontemporaneous tests were

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performed on the products resulting from the claimed method and the Paulucci method.

However, applicant does not show how these tests were done and how the methods were carried out. It is not known if the method used is exactly as described by Paulucci or as exactly disclosed by the specification. Pages 4-5 of the declaration states that a cut-away cross-section of the claimed product and the Paulucci product shows distinct and unexpected differences in the qualities. However, there is no evidence to show how the conclusion was reached. How were the characteristics determined? A conclusion does not equate to evidence in absence of showing how such conclusion was reached.

3. Applicant's arguments filed May 10, 2001 have been fully considered but they are not persuasive.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

July 27, 2001


LIEN TRAN
PRIMARY EXAMINER
